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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	
VERMONT YANKEE NUCLEAR)	Docket No. 50-271-OLA-4
POWER CORPORATION)	(Construction Period
)	Recapture)
(Vermont Yankee Nuclear)	
Power Station))	

VERMONT YANKEE OBJECTION TO DOCUMENT PRODUCTION
AND
REQUEST FOR PROTECTIVE ORDER
(INPO DOCUMENTS)

Pursuant to 10 C.F.R. § 2.740(c)(6) and § 2.790, and upon the Affidavit of Mr. James B. Sinclair submitted herewith and the authority of the "Memorandum of Agreement Between the Institute of Nuclear Power Operations and the U.S. Nuclear Regulatory Commission" dated October 20, 1988,¹ and *Critical Mass Energy Pro* NRC, 731 F. Supp. 554 (D.D.C., 1990), Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") hereby objects to the requests of the State of Vermont ("SOV") for the production of the documents identified by SOV in its second document production request (other than the document identified in Request No. 11). In support of this objection and request, Vermont Yankee says as follows:

1. As established in the affidavit of Mr. Sinclair, each of the documents in question is the property of the Institute of Nuclear Power Operations ("INPO"), and the documents (excepting only that requested in Request No. 11) are copyrighted by INPO and have been made available to Vermont Yankee only on the express condition that they not be disclosed to anyone else without INPO's consent. Vermont Yankee has informed INPO of the pending request for the inspection of these documents and been informed that INPO does not (with the exception of No. 11) so consent.

2. As established by the affidavit of Mr. Sinclair and the "Memorandum of Agreement" between INPO and NRC, each of these documents has been

¹A copy of which is attached to Mr. Sinclair's affidavit.

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made available to NRC on the understanding that NRC will control their distribution and not make them public, subject only to exceptions "addressed by the parties to this agreement [INPO and the Commission] on a case-by-case basis."

3. As established by the affidavit of Mr. Sinclair and the decision of the Court in the *Critical Mass* case, INPO, the Commission and the Court have each determined that preserving the confidentiality of these documents is important if not critical to the accomplishment of the INPO mission and, thereby, to the assistance lent by INPO to the Commission's accomplishment of its statutory responsibilities.

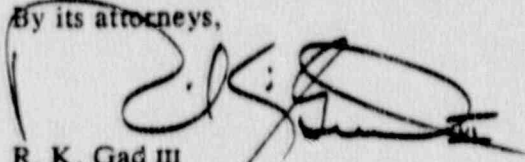
4. As established by the Memorandum of Agreement between INPO and NRC and by the legal position taken by the Commission in the *Critical Mass Energy Project* decision, the Commission has determined that these types of documents are exempt from obligatory disclosure under the Freedom of Information Act and that it is Commission policy that they should not be disclosed as a matter of discretion, except only in such specific cases as INPO and the Commission itself may determine.²

²"Such [INPO proprietary documents and information] will be appropriately identified as Limited or Restricted Distribution. Consistent with previous legal decisions sanctioning the exchange of proprietary information between INPO and NRC and in the interest of improving nuclear plant safety, NRC will control distribution of INPO proprietary documents and information with the agency and will exert best efforts to protect it from unauthorized disclosure. Exceptions to this policy for control of INPO proprietary documents and information will be addressed by the parties to this agreement on a case-by-case basis." *Memorandum of Agreement* at 2-3.

Because any order requiring the production of these documents would be at odds both with the position taken by the Commission in court in the *Critical Mass Energy Project v. NRC*, 731 F. Supp. 554 (D.D.C., 1990), matter and in contravention of the Commission's stated policy and undertakings as reflected in the Memorandum of Agreement between INPO and NRC, Vermont Yankee respectfully suggests that only the Commission itself can order these documents produced. See, e.g., *Cleveland Electric Illuminating Company* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-69, 16 NRC 751, 753 (1982). Cf. also *Carolina Power & Light Company* (Shearon Harris Nuclear Power Station), LBP-86-11, 23 NRC 294, 371, *aff'd*, ALAB-852, 24 NRC 532 (1986) (construing position taken by the Commission in court briefs to amount to such a Commission policy binding on the subordinate boards). Therefore, Vermont Yankee respectfully suggests that the appropriate action that this Board should take is to grant this motion for a protective order and then, if requested by SOV, certify its decision to the Commission under the provisions of 10 C.F.R. § 2.718(i).

WHEREFORE Vermont Yankee respectfully moves that its objection be sustained and that the Board enter a protective order that no production of the documents in question be had.

By its attorneys,



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Dated: June 16 1990.